

Commissioner Jessie J. Knight, Jr., Concurring:

This is a very critical case that has enormous implication for the future development of the business paradigms that will ensue around the Internet and a case that I have carefully reviewed. I support this order because I agree with its technical and legal analyses and the certainty that rendering this decision today provides to the competitive local carriers and internet service providers offering services in today's marketplace.

With regard to the technical and legal analyses, I endorse this order because it does not erode the line drawn in detail almost a decade ago in the federal government's computer inquiry cases that dealt specifically with computers and the inquiry to separate telecommunications services from enhanced information and computer-related services, such as those offered by internet service providers. As defined in the Telecommunications Act, **information services**, are distinguished from **telecommunications services** because among other things, they "generate, acquire, store, transform, process and retrieve information via telecommunications." As the order describes, internet service providers allow their subscribers to access files on the World Wide Web to acquire, retrieve, and utilize stored information. By upholding the distinctions between telecommunications and information services, this order does not blur these currently separately defined services into one generic category. If this line were somehow erased, the effort could lead to intrusion of regulation into today's internet marketplace, which the last decade of regulatory and judicial history has been careful to avoid.

Given the distinction between telecommunications and information services, I agree with the order's finding that terminating calls to an internet service provider is no different than terminating a call to any other end user. Where the distinction does exist is between the call to reach the internet provider and the enhanced or information service provided by the internet provider.

Numerous technical arguments have been made on both sides to define why use of the internet is or is not like any other phone call. But the heart of the matter, in my mind, is that internet service providers are not certificated as telecommunications carriers. Based on this fact, I see no reason to potentially expand jurisdiction over them by now distinguishing them from other end users. No matter how sophisticated the technical arguments, the Commission should not accidentally equate the internet network with the phone network at this time, and otherwise erase the model that parties relied on when they negotiated current interconnection contracts.

Also, I support this order for the certainty it provides nascent facilities-based carriers, who have invested millions of dollars in networks to terminate calls to their customers, including internet service providers. These facilities-based carriers have long counted on receiving payment for the terminations they have performed. By adopting this order, the Commission will assure the marketplace, including the investment community backing the competitive carriers, that the contractual arrangements that the Commission approved in negotiated interconnection agreements can be relied upon. It is important to note that the order does allow future renegotiation of these arrangements to suit the new realities of this market as it evolves over time.

Some have characterized compensation to competitive local carriers for terminating internet service provider traffic as a "lop-sided payment." I wholeheartedly disagree. The competitive carriers are entitled to compensation for the terminations they perform, especially since they relieve the incumbent of performing these terminations, such that the incumbent does not incur the operating costs attendant to this function. Furthermore, carriers are free to renegotiate the terms of these interconnection agreements as they expire, if the current terms are no longer acceptable to either party.

By voting on this order today, the Commission is able to weigh in with its view on the debate over treatment of calls to internet providers as it unfolds at the national level before the Federal Communications Commission.

Dated October 22, 1998 at San Francisco, California.

/s/ Jessie J. Knight, Jr.

 Jessie J. Knight, Jr.
 Commissioner